

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated March 31, 2010
Reply to Office Action mailed on October 5, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 7-10 and 19-28, 30-31, and 33-34 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Leaderman

The Office Action stated that claims 8-10, 19, 20, 22, 28-31, and 34 were rejected under 35 USC §103(a) over Leaderman (US 2002/0061329) (Leaderman). This rejection is traversed and reconsideration respectfully requested.

The independent claims addressed in this rejection are claims 19 and 28. Independent claim 19 recites in relevant part a tooth whitening product comprising a film and a mesh comprising a plurality of fibers which are arranged to define a plurality of void spaces which extend through the thickness of the film. Claim 28 is directed to a mesh having a first side and second side and comprising a plurality of coated fibers, the coated fibers are arranged to provide a plurality of void spaces that extend from the first side of the mesh to the second side of the mesh; and wherein the fiber coating partially fills the void spaces and comprises a water hydratable polymer and a tooth whitening agent.

The Office Action characterized Leaderman as teaching a sheet which may be impregnated with the disclosed gel and a backing layer which may be porous and have holes, which suggests the holes extend through the device for the covered area to breathe. Applicants disagree. First, paragraph 21 which discusses the use of a porous backing for allowing a wound to breathe appears to be directed to non-oral cavity embodiments when read in conjunction with the preceding paragraphs. Paragraphs 17 and 18 appear to address wet environments, like the oral cavity

(paragraph 18), while paragraph 19 forward appear to address other areas of use (skin and other areas of the body).

Secondly, paragraph 17 focuses on protecting the dressing from compromised adhesiveness from an overly wet environment by use of a coating. This is in direct contradiction to the teachings in paragraph 21 which says the porous substrate contributes to maintaining or increasing adhesiveness. Additionally, even if a porous backing could be used in the oral cavity, the Office Action has pointed to no teaching regarding the use of the dressing within the oral cavity which would allow the inference of the existence of void spaces which extend through the thickness of the film (claim 19) or void spaces that extend from the first side of the mesh to the second side of the mesh where the fiber coating partially fills the void spaces (claim 28). The use of a porous backing layer is just that, a porous backing layer. This information is virtually irrelevant as to the structure of the underlying dressing. Just because material can pass through the pores of the backing layer does not mean that the same material can pass through the dressing or that, if it does, it passes in the same way.

Lastly, the Office Action stated the absorbent gauze or dressing has holes and the films are used to coat the fibers of the absorbent gauze or dressing which suggests that the holes are not filled completely. Applicants disagree. The office Action points to no discussion of the degree to which the fibers are coated and whether the coating would likewise cover the holes in the dressing. Instead, the Office Action uses the language describing what is coated to infer what is not. Applicants can find no way of determining what is not coated based on the disclosure in Leaderman.

Applicants contend they can find no teaching in Leaderman relating to how any of the methods of coating listed in Leaderman would lead to a product which would have void spaces which would extend through the thickness of the film (claim 19) or would result in a partial filling of the mesh (claim 28). Additionally, if considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055,

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1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981).

As such, it is respectfully submitted that Leaderman does not establish a *prima facie* case of obviousness because the Office Action fails to point to teachings relating to all of the limitations of independent claims 19 and 28. Therefore, claims 19 and 28, and those claims dependent therefrom are nonobvious over Leaderman and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones

The Office Action stated that claims 10, 19, 20, 22, 28 and 29 were rejected under 35 USC §103(a) over Jones et al (US 2005/0260544) (Jones). This rejection is traversed and reconsideration respectfully requested.

Independent claims 19 and 28 are discussed above.

The Office Action characterized Jones as teaching a whitening gel which may be impregnated into the absorbent material's bulk or in the form of a perforated layer. When a perforated film is on a porous backing layer this suggests that the holes extend through the device. Additionally, the Office Action stated since some of the film and gel may be absorbed and some may remain unabsorbed as a surface layer this suggests the holes are not filled completely. Applicants disagree.

First, the office Action points to no discussion of the degree to which the fibers are coated and whether the coating would likewise cover the holes in the dressing. Instead, the Office Action uses the language describing what is coated to infer what is not. Additionally, there is no way of knowing whether unabsorbed material on the surface of a fiber is partially covering a hole or just sitting on top of a portion of the fiber. Applicants can find no way of determining what is not coated based on the disclosure in Jones.

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Additionally, assuming the Office Action characterization of Jones is correct with respect to the teachings of a perforated whitening layer and a porous backing layer, the Office Action has pointed to no teachings of the interplay of these two layers. Thus, there is no way of knowing whether the combination of these two layers would result in holes that pass all the way through the device as contended in the Office Action.

Applicants contend the Office Action fails to point to direct teachings in Jones regarding a product which would have void spaces which would extend through the thickness of the film (claim 19) or would result in a partial filling of the mesh (claim 28). Additionally, if considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981).

As such, it is respectfully submitted that Jones does not establish a *prima facie* case of obviousness because the Office Action fails to point to teachings relating to all of the limitations of independent claims 19 and 28. Therefore, claims 19 and 28, and those claims dependent therefrom are nonobvious over Leaderman and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones In View of Ruben

The Office Action stated that claim 7 was rejected under 35 USC §103(a) over Jones in view of Ruben (US 6,146,655) (Ruben). This rejection is traversed and reconsideration respectfully requested.

It is respectfully submitted that Jones in view of Ruben does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 7 depends. The deficiencies of Jones with respect to independent claim 19 are discussed above and the Office Action points to no teaching in Ruben

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which would cure its deficiencies. As such, claim 7 is nonobvious over Jones in view of Ruben and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones In View of Chen

The Office Action stated that claims 21, 23-27, and 33 are rejected under 35 USC §103(a) over Jones in view of Chen. This rejection is traversed and reconsideration respectfully requested.

As stated above, Applicants contend the Office fails to point to direct teachings in Jones regarding a product which would have void spaces which would extend through the thickness of the film (claim 19) or would result in a partial filling of the mesh (claim 28). The discussion with regard to claim 28 is similarly applicable to claim 23. Additionally, if considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981).

It is respectfully submitted that Jones in view of Chen does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 21 depends or of claim 23, from which claims 24-27 depend, or of claim 28, from which claim 33 depends. The deficiencies of Jones with respect to independent claims 19 and 28 are discussed above (the arguments for claim 28 are also applicable to claim 23) and the Office Action points to no teaching in Chen which would cure its deficiencies. As such, claims 2, 23-27, and 33 are nonobvious over Jones in view of Chen and reconsideration is respectfully requested.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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